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In a majority of the states of this country it is held that, when on an indictment for murder, the accused is found guilty of a lesser offense, it is virtually an acquittal of the higher offense. *Hunt v. State*, 25 Miss. 358; *Smith v. State*, 22 Texas App. 316. And the only effect of setting aside the verdict and granting a new trial is to leave undetermined the question whether the accused committed the lesser offense. *State v. Belden*, 33 Wis. 121; *Johnson v. State*, 27 Fla. 245. But there are a number of states in which it is held that the principle that no man can be twice put in jeopardy for the same offense means "without his consent," and he may avail himself of the privilege, or not, as he pleases. *State v. Bradley*, 67 Vt. 465. And the effect of setting aside a verdict, finding the defendant guilty of manslaughter, is to leave at issue and undetermined the fact of the homicide, also the fact whether the defendant committed it if one was committed. *State v. Behrmer*, 20 Ohio St. 572; *State v. Gillis*, 73 S. C. 318. The accused is tried on the original indictment, and the trial proceeds as if no other trial had ever been held. *State v. Morrison*, 67 Kan. 144; *Waller v. State*, 104 Ga. 505.

DAMAGES—GROUNDS—MENTAL SUFFERING.—ST. LOUIS, I. M. & S. RY. CO. v. TAYLOR, 104 S. W. (ARK.) 551.—*Held*, that under the rule that mental suffering alone, without physical injury or other elements of damage, cannot be made the subject of an independent action for damage, even where the act or violation of duty complained of was wilfully committed, a railroad is not liable for damages to a passenger for mental suffering caused by mere verbal abuse of the station agent. Wood and Riddick, J.J., *dissenting*.

General rule is that mental suffering alone gives no right of action, *Lynch v. Knight*, 9 H. L. Cases 577; *Joch v. Dankwordt*, 85 Ill. 331. The cases allowing recovery for it can be grouped into three classes. First, when it is intimately connected with personal injury, *Robertson v. Cornelson*, 34 Fed. Rep. 716; *McMahon v. The Northern C. R. R. Co.*, 39 Md. 438, or when it is natural or proximate consequence of some recognized cause of action, *Gilvey v. Lewis*, 68 Conn. 392; or actionable injury, *Stone v. Heywood*, 7 Allen (Mass.) 118. Second, breach of contract for marriage and in seduction cases, *Southerland Damages*, 732; *Lunt v. Philbrick*, 59 N. H. 59. Third, when a wilful wrong has been committed, *William v. Underhill*, 71 N. Y. Supp. 291; *W. U. Tel. Co. v. Henderson*, 89 Ala. 510, although on this point the authorities are not harmonious. This latter doctrine in some cases is extended to allow recovery for any injury connected with insult or malice, *Schmitz v. The St. L. I. M. & S. Ry. Co.*, 119 Mo. 256, or grief, etc., *Wadsworth v. M. N. Tel. Co.*, 86 Tenn. 695, and this without proof of any pecuniary loss, *Reise v. M. N. Tel. Co.*, 123 Ind. 294, since, the courts say, mind is no less a part of the person than the body, and sufferings of former are sometimes more acute than latter, *Young v. Telegraph Co.*, 107 N. C. 370, and even going so far as to say that wounding a man's feelings is as much actual damage as breaking his limbs, *Herd v. The Georgia R. Co.*, 79 Ga. 358.

DEAD BODIES—POWER TO ORDER EXHUMATION—RIGHTS OF WIDOW.—MUTUAL LIFE INS. CO. OF N. Y. v. GRIESA, ET AL., 156 FED. 398.—*Held*, that a court of law has no power to order the exhumation of a dead body in an action at law to which the widow of the deceased, who has the right to control the body, is not a party.